

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

DAVID CRUZ,	:	CIVIL ACTION NO. 1:16-CV-11
	:	
Petitioner	:	(Chief Judge Conner)
	:	
v.	:	
	:	
UNITED STATES OF AMERICA,	:	
	:	
Respondent	:	

ORDER

AND NOW, this 29th day of February, 2016, upon consideration of the report (Doc. 4) of Magistrate Judge Joseph F. Saporito, Jr., recommending that the court dismiss the petition (Doc. 1) for writ of habeas corpus pursuant to 28 U.S.C. § 2241 filed by petitioner David Cruz (“Cruz”)¹, wherein Judge Saporito opines that the court is without jurisdiction to consider Cruz’s instant petition because Cruz cannot demonstrate that 28 U.S.C. § 2255 is inadequate or ineffective to test the legality of his detention, (Doc. 4 at 4-7), and the court noting that Cruz has filed objections (Doc. 5) to the report, see FED. R. CIV. P. 72(b)(2), and, following a *de novo* review of the contested portions of the report, see *Behar v. Pa Dep’t of Transp.*, 791 F. Supp. 2d 383, 389 (M.D. Pa. 2011) (citing 28 U.S.C. § 636(b)(1)(C); *Sample v. Diecks*, 885 F.2d 1099, 1106 n.3 (3d Cir. 1989)), and applying a clear error standard of review to the uncontested portions, see *Cruz v. Chater*, 990 F. Supp. 375, 376-78 (M.D. Pa. 1999),

¹ The court notes that the introductory paragraph to the magistrate judge’s report identifies the petitioner by the name “Pagan” rather than “Cruz.” (Doc. 4 at 1). This isolated typographical error is plainly inadvertent and does not depreciate the balance of the report’s sound legal analysis.

the court finding Judge Saporito's analysis to be thorough, well-reasoned, and fully supported by the record, and further finding Cruz's objection to be without merit and squarely addressed by the report, it is hereby ORDERED that:

1. The report (Doc. 4) of Magistrate Judge Saporito is ADOPTED.
2. Cruz's petition (Doc. 1) pursuant to 28 U.S.C. § 2241 is DISMISSED without prejudice to Cruz's right to file a motion pursuant to 28 U.S.C. § 2255 in the sentencing court, subject to the preauthorization requirements of 28 U.S.C. §§ 2244 and 2255(h), as the same may apply.
3. The Clerk of Court is directed to CLOSE this case.

/S/ CHRISTOPHER C. CONNER
Christopher C. Conner, Chief Judge
United States District Court
Middle District of Pennsylvania